HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.17578 OF 2007

Between:

Mohd.Ameen-ul Haq and another

. . .Petitioners

AND

State Bank of Hyderabad, Nalgonda

. . .Respondent

:: ORDER ::

Counsel for the petitioners : Shri B.Krishna Mohan

20th August, 2007

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Per G.S.SINGHVI, CJ

Feeling dissatisfied with the concession granted by the Debts Recovery Appellate Tribunal at Chennai (for short, 'the Appellate Tribunal') in the matter of deposit of 75% of the decretal amount in terms of Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the Act'), the petitioners have filed this petition under Article 226 of the Constitution of India and prayed that the Appellate Tribunal be directed to decide the appeal preferred by them without insisting on pre-deposit of the decretal amount.

The petitioners availed loan to the tune of Rs.5 lakhs and odd from the State Bank of Hyderabad (for short, 'the bank') sometime in 1983, but did not repay the instalments of loan on due dates. Therefore, the bank filed O.S.No.37 of 1993 in the Court of Subordinate Judge, Bhongir for recovery of Rs.12,77,811/- with interest. On coming into force of the Act, the suit was transferred to Bangalore Bench of the Debts Recovery Tribunal (for short, 'the Tribunal') and was numbered as O.A.No.488 of 1996. Subsequently, it was transferred to Hyderabad Bench of the Tribunal and was numbered as O.A.No.181 of 1999. By an order dated 26.10.2006, the Tribunal allowed the application and declared that the opposite parties i.e. the petitioners herein are jointly and severally liable to pay Rs.12,77,811/- with costs and future interest @ 18.75% from the date of suit till the date of realization. The Tribunal also opined that the bank will be free to recover the amount by selling the mortgaged

properties.

The petitioners challenged the order of the Tribunal by filing an appeal under Section 20 of the Act. They also filed I.A.No.767 of 2006 under proviso to Section 21 of the Act for waiver of the requirement of deposit in terms of the substantive part of that section. In the affidavit filed in support of the application for waiver, petitioner No.1 averred that the decree passed by the Tribunal is vitiated by an error of law and that their financial condition was extremely weak on account of continuous drought in the district.

The Appellate Tribunal considered the averments contained in the affidavit of petitioner No.1 and directed them to deposit Rs.12,00,000/- as a condition for entertaining and deciding the appeal.

Shri B. Krishna Mohan argued that the order under challenge is liable to be set aside because, while declining the petitioners' prayer for absolute stay, the Appellate Tribunal ignored the fact that their financial condition was extremely weak. Learned counsel submitted that the condition of depositing Rs.12 lakhs is extremely onerous and, therefore, this Court may issue a mandamus to the Appellate Tribunal to hear the appeal without insisting on deposit of the amount specified in order dated 26.10.2006.

In our opinion, there is no merit in the argument/submission of the learned counsel and the writ petition is liable to be dismissed at the threshold. Although drafting of the petition has been so articulated as to give an impression that the petitioners are being burdened with the liability of depositing of Rs.12,00,000/- without legal justification, but we are not inclined to relieve them of the obligation to deposit an amount which is less than even the basic amount specified in the Tribunal's order. The petitioners have not controverted the fact that as on the date of filing suit in 1993, they were liable to pay Rs.12,77,811/-

. If the interest @18.75% is added to the amount due, their liability will be more than Rs.45,00,000/- (as on today). Therefore, the direction given by the Appellate Tribunal to the petitioners to deposit Rs.12,00,000/- cannot be termed as arbitrary or unjust.

We are further of the view that the power vested in the Tribunal under proviso to Section 21 to waive, wholly or partially, the requirement of pre-deposit cannot be exercised ex debito justitiae. Section 21 has been enacted by the legislature with a view to ensure that persons seeking to challenge an order passed by the Tribunal under Section 19 deposit at least 75% of the decretal amount as a condition to the entertaining and deciding of the appeal. The Tribunal and the Appellate Tribunal are bound to keep in view that the banks and financial institutions are custodians of pubic money and recovery of the loan etc. given by them is imperative for protecting the financial health of the nation. Therefore, in very exceptional cases, the Appellate Tribunal would be justified in exercising power under proviso to Section 21. Even in such cases, there cannot be any justification to entertain the appeal without insisting on deposit of the main amount specified in the Tribunal's order.

There is another reason for our disinclination to entertain the appellant's prayer for total waiver or to restrain the bank from taking steps to recover the amount specified in the Tribunal's order dated 26.10.2006. It is settled law that in exercise of the power vested under Article 226 of the Constitution of India, the High Court will be extremely slow in granting interim relief in fiscal matters when the main case is pending before other adjudicatory forum. In **Assistant Collector of Central Excise v. Dunlop India Limited**[1], the Supreme Court deprecated the entertaining of writ petition by the High Courts only for the purpose of granting interim relief to the petitioner and observed:

> "Art. 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Art.226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. The Supreme Court can take judicial notice of the fact that the vast majority of the petitions under Art. 226 of the Constitution are filed solely for purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice needs to be strongly discouraged."

In the result, the writ petition is dismissed.

As a sequel to dismissal of the main petition, WPMP No.22513 of 2007 filed by the petitioners for interim relief is also dismissed.

G.S.SINGHVI, CJ

20th August, 2007

C.V.NAGARJUNA REDDY, J

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[1] AIR 1985 SC 330